

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL S. MAPES, MILTON PETERSEN
IV, BRIAN LEICHTNER, DAVID MOHR and
DAVID STADING,

Plaintiffs,

v.

WELLINGTON CAPITAL GROUP, INC.,

Defendant.

Case No. 8:07-CV-77

**PLAINTIFFS' MOTION FOR
SANCTIONS**

COMES NOW Plaintiffs and move this Court to impose the appropriate sanctions on Defendant Wellington Capital Group, Inc. ("Wellington") based on Frank Amodeo's refusal to appear for a Court-ordered deposition. In support of its Motion, Plaintiffs state Wellington's counsel notified Plaintiffs Amodeo would not be attending his deposition the day before Amodeo was scheduled to be deposed. Amodeo failed to provide any legal basis for his refusal to attend, failed to notify this Court of his intention not to comply with this Court's order, and failed to propose any alternative dates or times to reschedule Amodeo's deposition. Amodeo did, however, prompt Plaintiffs to file a Motion for Sanctions upon which time Amodeo would presumably advise the Court, but not Plaintiffs, of his justifications for his noncompliance.

Plaintiffs are contemporaneously filing a separate brief in support of this Motion pursuant to NE.Civ.R. 7.1(a)(1)(A).

WHEREFORE, pursuant to Federal Rule of Civil Procedure 37, Plaintiffs now seek sanctions on Wellington's counterclaims of (1) breach of contract; (2) tortious interference with

a business relationship; (3) breach of good faith and fair dealing; (4) Fraud; (6)¹ conversion; (7) rescission; and (8) declaratory relief, due to the Wellington's continued failure to comply with this Court's Orders during the discovery process.

Plaintiffs request the Court sanction Wellington with default judgment in favor of Plaintiffs on Wellington's counterclaim. Further, the Court should sanction Wellington with an order precluding Amodeo from advancing any affidavit or declaration opposing Plaintiffs' Motion for Summary Judgment.

Respectfully submitted this 30th day of June, 2008.

MICHAEL S. MAPES, MILTON PETERSEN
IV, BRIAN LEICHNER, DAVID MOHR and
DAVID STADING, Plaintiffs

By s/John P. Passarelli

John P. Passarelli #16018
James M. Sulentic #19610
Kutak Rock LLP
The Omaha Building
1650 Farnam Street
Omaha, NE 68102-2186
(402) 346-6000

¹ Wellington has not asserted a Count V.

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2008 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Gross & Welch, P.C., L.L.O.

Michael J. Mooney

Robert A. Mooney

Elizabeth M. Callaghan

By s/John P. Passarelli

John P. Passarelli